



General Assembly

Substitute Bill No. 5128

February Session, 2012

* ____HB05128ENV__032612____ *

***AN ACT CONCERNING CERTAIN REVISIONS TO THE COASTAL
ZONE MANAGEMENT STATUTES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 22a-92 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2012*):

3 (a) The following general goals and policies are established by this
4 chapter:

5 (1) To [insure] ensure that the development, preservation or use of
6 the land and water resources of the coastal area proceeds in a manner
7 consistent with the rights of private property owners and the
8 capability of the land and water resources to support development,
9 preservation or use without significantly disrupting either the natural
10 environment or sound economic growth;

11 (2) To preserve and enhance coastal resources in accordance with
12 the policies established by chapters 439, 440, 446i, 446k, 447, 474 and
13 477;

14 (3) To give high priority and preference to uses and facilities which
15 are dependent upon proximity to the water or the shorelands
16 immediately adjacent to marine and tidal waters;

17 (4) To resolve conflicts between competing uses on the shorelands

18 adjacent to marine and tidal waters by giving preference to uses that
19 minimize adverse impacts on natural coastal resources while
20 providing long term and stable economic benefits;

21 (5) To consider in the planning process the potential impact of a rise
22 in sea level, coastal flooding and erosion patterns on coastal
23 development so as to minimize damage to and destruction of life and
24 property and reduce the necessity of public expenditure to protect
25 future development from such hazards;

26 (6) To encourage public access to the waters of Long Island Sound
27 by expansion, development and effective utilization of state-owned
28 recreational facilities within the coastal area that are consistent with
29 sound resource conservation procedures and constitutionally
30 protected rights of private property owners;

31 (7) To conduct, sponsor and assist research in coastal matters to
32 improve the data base upon which coastal land and water use
33 decisions are made;

34 (8) To coordinate the activities of public agencies to [insure] ensure
35 that state expenditures enhance development while affording
36 maximum protection to natural coastal resources and processes in a
37 manner consistent with the state plan for conservation and
38 development adopted pursuant to part I of chapter 297;

39 (9) To coordinate planning and regulatory activities of public
40 agencies at all levels of government to [insure] ensure maximum
41 protection of coastal resources while minimizing conflicts and
42 disruption of economic development; and

43 (10) To [insure] ensure that the state and the coastal municipalities
44 provide adequate planning for facilities and resources which are in the
45 national interest as defined in section 22a-93, as amended by this act,
46 and to [insure] ensure that any restrictions or exclusions of such
47 facilities or uses are reasonable. Reasonable grounds for the restriction
48 or exclusion of a facility or use in the national interest shall include a

49 finding that such a facility or use: (A) May reasonably be sited outside
50 the coastal boundary; (B) fails to meet any applicable federal and state
51 environmental, health or safety standard or (C) unreasonably restricts
52 physical or visual access to coastal waters. This policy does not exempt
53 any nonfederal facility in use from any applicable state or local
54 regulatory or permit program nor does it exempt any federal facility or
55 use from the federal consistency requirements of Section 307 of the
56 federal Coastal Zone Management Act.

57 (b) In addition to the policies stated in subsection (a), the following
58 policies are established for federal, state and municipal agencies in
59 carrying out their responsibilities under this chapter:

60 (1) Policies concerning development, facilities and uses within the
61 coastal boundary are: (A) To manage uses in the coastal boundary
62 through existing municipal planning, zoning and other local
63 regulatory authorities and through existing state structures, dredging,
64 wetlands, and other state siting and regulatory authorities, giving
65 highest priority and preference to water-dependent uses and facilities
66 in shorefront areas; (B) to locate and phase sewer and water lines so as
67 to encourage concentrated development in areas which are suitable for
68 development; and to disapprove extension of sewer and water services
69 into developed and undeveloped beaches, barrier beaches and tidal
70 wetlands except that, when necessary to abate existing sources of
71 pollution, sewers that will accommodate existing uses with limited
72 excess capacity may be used; (C) to promote, through existing state
73 and local planning, development, promotional and regulatory
74 authorities, the development, reuse or redevelopment of existing
75 urban and commercial fishing ports giving highest priority and
76 preference to water dependent uses, including but not limited to
77 commercial and recreational fishing and boating uses; to disallow uses
78 which unreasonably congest navigation channels, or unreasonably
79 preclude boating support facilities elsewhere in a port or harbor; and
80 to minimize the risk of oil and chemical spills at port facilities; (D) to
81 require that structures in tidal wetlands and coastal waters be
82 designed, constructed and maintained to minimize adverse impacts on

83 coastal resources, circulation and sedimentation patterns, water
84 quality, and flooding and erosion, to reduce to the maximum extent
85 practicable the use of fill, and to reduce conflicts with the riparian
86 rights of adjacent landowners; (E) to disallow the siting within the
87 coastal boundary of new tank farms and other new fuel and chemical
88 storage facilities which can reasonably be located inland and to require
89 any new storage tanks which must be located within the coastal
90 boundary to abut existing storage tanks or to be located in urban
91 industrial areas and to be adequately protected against floods and
92 spills; (F) to make use of rehabilitation, upgrading and improvement of
93 existing transportation facilities as the primary means of meeting
94 transportation needs in the coastal area; (G) to encourage increased
95 recreational boating use of coastal waters, where feasible, by (i)
96 providing additional berthing space in existing harbors, (ii) limiting
97 non-water-dependent land uses that preclude boating support
98 facilities, (iii) increasing state-owned launching facilities, and (iv)
99 providing for new boating facilities in natural harbors, new protected
100 water areas and in areas dredged from dry land; (H) to protect coastal
101 resources by requiring, where feasible, that such boating uses and
102 facilities (i) minimize disruption or degradation of natural coastal
103 resources, (ii) utilize existing altered, developed or redevelopment
104 areas, (iii) are located to assure optimal distribution of state-owned
105 facilities to the state-wide boating public, and (iv) utilize ramps and
106 dry storage rather than slips in environmentally sensitive areas; (I) to
107 protect and where feasible, upgrade facilities serving the commercial
108 fishing and recreational boating industries; to maintain existing
109 authorized commercial fishing and recreational boating harbor space
110 unless the demand for these facilities no longer exists or adequate
111 space has been provided; to design and locate, where feasible,
112 proposed recreational boating facilities in a manner which does not
113 interfere with the needs of the commercial fishing industry; [and] (J) to
114 require reasonable mitigation measures where development would
115 adversely impact historical, archaeological, or paleontological
116 resources that have been designated by the state historic preservation
117 officer; and (K) to encourage the strategic realignment of development,

118 over a period of several decades, for coastal lands that have a
119 likelihood of being lost due to erosion and coastal lands that contain
120 structures that are subject to repetitive substantial damage.

121 (2) Policies concerning coastal land and water resources within the
122 coastal boundary are: (A) To manage coastal bluffs and escarpments so
123 as to preserve their slope and toe; to discourage uses which do not
124 permit continued natural rates of erosion and to disapprove uses that
125 accelerate slope erosion and alter essential patterns and supply of
126 sediments to the littoral transport system; (B) to manage rocky
127 shorefronts so as to [insure] ensure that development proceeds in a
128 manner which does not irreparably reduce the capability of the system
129 to support a healthy intertidal biological community; to provide
130 feeding grounds and refuge for shorebirds and finfish, and to dissipate
131 and absorb storm and wave energies; (C) to preserve the dynamic form
132 and integrity of natural beach systems in order to provide critical
133 wildlife habitats, a reservoir for sand supply, a buffer for coastal
134 flooding and erosion, and valuable recreational opportunities; to
135 [insure] ensure that coastal uses are compatible with the capabilities of
136 the system and do not unreasonably interfere with natural processes of
137 erosion and sedimentation, and to encourage the restoration and
138 enhancement of disturbed or modified beach systems; (D) to manage
139 intertidal flats so as to preserve their value as a nutrient source and
140 reservoir, a healthy shellfish habitat and a valuable feeding area for
141 invertebrates, fish and shorebirds; to encourage the restoration and
142 enhancement of degraded intertidal flats; to allow coastal uses that
143 minimize change in the natural current flows, depth, slope,
144 sedimentation, and nutrient storage functions and to disallow uses that
145 substantially accelerate erosion or lead to significant despoliation of
146 tidal flats; (E) to preserve tidal wetlands and to prevent the
147 despoliation and destruction thereof in order to maintain their vital
148 natural functions; to encourage the rehabilitation and restoration of
149 degraded tidal wetlands and where feasible and environmentally
150 acceptable, to encourage the creation of wetlands for the purposes of
151 shellfish and finfish management, habitat creation and dredge spoil

152 disposal; (F) to manage coastal hazard areas so as to [insure] ensure
153 that development proceeds in such a manner that hazards to life and
154 property are minimized and to promote nonstructural solutions to
155 flood and erosion problems except in those instances where structural
156 alternatives prove unavoidable and necessary to protect existing
157 inhabited structures, infrastructural facilities or water dependent uses;
158 (G) to promote, through existing state and local planning,
159 development, promotional and regulatory programs, the use of
160 existing developed shorefront areas for marine-related uses, including
161 but not limited to, commercial and recreational fishing, boating and
162 other water-dependent commercial, industrial and recreational uses;
163 (H) to manage undeveloped islands in order to promote their use as
164 critical habitats for those bird, plant and animal species which are
165 indigenous to such islands or which are increasingly rare on the
166 mainland; to maintain the value of undeveloped islands as a major
167 source of recreational open space; and to disallow uses which will
168 have significant adverse impacts on islands or their resource
169 components; (I) to regulate shoreland use and development in a
170 manner which minimizes adverse impacts upon adjacent coastal
171 systems and resources; and (J) to maintain the natural relationship
172 between eroding and depositional coastal landforms and to minimize
173 the adverse impacts of erosion and sedimentation on coastal land uses
174 through the promotion of nonstructural mitigation measures.
175 Structural solutions are permissible when necessary and unavoidable
176 for the protection of infrastructural facilities, water-dependent uses, or
177 existing inhabited structures, and where there is no feasible, less
178 environmentally damaging alternative and where all reasonable
179 mitigation measures and techniques have been provided to minimize
180 adverse environmental impacts.

181 (c) In addition to the policies stated in subsections (a) and (b), the
182 following policies are established for federal and state agencies in
183 carrying out their responsibilities under this chapter:

184 (1) Policies concerning development, facilities and uses within the
185 coastal boundary are: (A) To minimize the risk of spillage of petroleum

186 products and hazardous substances, to provide effective containment
187 and cleanup facilities for accidental spills and to disallow offshore oil
188 receiving systems that have the potential to cause catastrophic oil spills
189 in the Long Island Sound estuary; (B) to disallow any filling of tidal
190 wetlands and nearshore, offshore and intertidal waters for the purpose
191 of creating new land from existing wetlands and coastal waters which
192 would otherwise be undevelopable, unless it is found that the adverse
193 impacts on coastal resources are minimal; (C) to initiate in cooperation
194 with the federal government and the continuing legislative committee
195 on state planning and development a long-range planning program for
196 the continued maintenance and enhancement of federally-maintained
197 navigation facilities in order to effectively and efficiently plan and
198 provide for environmentally sound dredging and disposal of dredged
199 materials; to encourage, through the state permitting program for
200 dredging activities, the maintenance and enhancement of existing
201 federally-maintained navigation channels, basins and anchorages and
202 to discourage the dredging of new federally-maintained navigation
203 channels, basins and anchorages; (D) to reduce the need for future
204 dredging by requiring that new or expanded navigation channels,
205 basins and anchorages take advantage of existing or authorized water
206 depths, circulation and siltation patterns and the best available
207 technologies for reducing controllable sedimentation; (E) to disallow
208 new dredging in tidal wetlands except where no feasible alternative
209 exists and where adverse impacts to coastal resources are minimal; (F)
210 to require that new or improved shoreline rail corridors be designed
211 and constructed so as (i) to prevent tidal and circulation restrictions
212 and, when practicable, to eliminate any such existing restrictions, (ii) to
213 improve or have a negligible adverse effect on coastal access and
214 recreation and (iii) to enhance or not unreasonably impair the visual
215 quality of the shoreline; (G) to require that coastal highways and
216 highway improvements, including bridges, be designed and
217 constructed so as to minimize adverse impacts on coastal resources; to
218 require that coastal highway and highway improvements give full
219 consideration to mass transportation alternatives and to require that
220 coastal highways and highway improvements where possible enhance,

221 but in no case decrease coastal access and recreational opportunities;
222 (H) to disallow the construction of major new airports and to
223 discourage the substantial expansion of existing airports within the
224 coastal boundary; to require that any expansion or improvement of
225 existing airports minimize adverse impacts on coastal resources,
226 recreation or access; (I) to manage the state's fisheries in order to
227 promote the economic benefits of commercial and recreational fishing,
228 enhance recreational fishing opportunities, optimize the yield of all
229 species, prevent the depletion or extinction of indigenous species,
230 maintain and enhance the productivity of natural estuarine resources
231 and preserve healthy fisheries resources for future generations; (J) to
232 make effective use of state-owned coastal recreational facilities in order
233 to expand coastal recreational opportunities including the
234 development or redevelopment of existing state-owned facilities where
235 feasible; (K) to require as a condition in permitting new coastal
236 structures, including but not limited to, groins, jetties or breakwaters,
237 that access to, or along, the public beach below mean high water must
238 not be unreasonably impaired by such structures and to encourage the
239 removal of illegal structures below mean high water which
240 unreasonably obstruct passage along the public beach; and (L) to
241 promote the revitalization of inner city urban harbors and waterfronts
242 by encouraging appropriate reuse of historically developed
243 shorefronts, which may include minimized alteration of an existing
244 shorefront in order to achieve a significant net public benefit, provided
245 (i) such shorefront site is permanently devoted to a water dependent
246 use or a water dependent public use such as public access or recreation
247 for the general public and the ownership of any filled lands remain
248 with the state or an instrumentality thereof in order to secure public
249 use and benefit in perpetuity, (ii) landward development of the site is
250 constrained by highways, railroads or other significant infrastructure
251 facilities, (iii) no other feasible, less environmentally damaging
252 alternatives exist, (iv) the adverse impacts to coastal resources of any
253 shorefront alteration are minimized and compensation in the form of
254 resource restoration is provided to mitigate any remaining adverse
255 impacts, and (v) such reuse is consistent with the appropriate

256 municipal coastal program or municipal plan of development.

257 (2) Policies concerning coastal land and other resources within the
258 coastal boundary are: (A) To manage estuarine embayments so as to
259 [insure] ensure that coastal uses proceed in a manner that assures
260 sustained biological productivity, the maintenance of healthy marine
261 populations and the maintenance of essential patterns of circulation,
262 drainage and basin configuration; to protect, enhance and allow
263 natural restoration of eelgrass flats except in special limited cases,
264 notably shellfish management, where the benefits accrued through
265 alteration of the flat may outweigh the long-term benefits to marine
266 biota, waterfowl, and commercial and recreational finfisheries and (B)
267 to maintain, enhance, or, where feasible, restore natural patterns of
268 water circulation and fresh and saltwater exchange in the placement or
269 replacement of culverts, tide gates or other drainage or flood control
270 structures.

271 (d) In addition to the policies in this section, the policies of the state
272 plan of conservation and development adopted pursuant to part I of
273 chapter 297 shall be applied to the area within the coastal boundary in
274 accordance with the requirements of section 16a-31.

275 Sec. 2. Section 22a-93 of the general statutes is amended by adding
276 subdivision (19) as follows (*Effective October 1, 2012*):

277 (NEW) (19) "Rise in sea level" means a rise, over a period of multiple
278 years, expressed in terms of North American Vertical Data (NAVD), in
279 the surface level of tidal and coastal waters of the state that are
280 projected to occur at an average rate of not less than 2.4 inches per
281 decade, or at a rate determined by the Commissioner of Energy and
282 Environmental Protection to be in accordance with the best available
283 science.

284 Sec. 3. Section 22a-106 of the general statutes is repealed and the
285 following is substituted in lieu thereof (*Effective October 1, 2012*):

286 (a) In addition to determining that the activity proposed in a coastal

287 site plan satisfies other lawful criteria and conditions, a municipal
288 board or commission reviewing a coastal site plan shall determine
289 whether or not the potential adverse impacts of the proposed activity
290 on both coastal resources and future water-dependent development
291 activities are acceptable.

292 (b) In determining the acceptability of potential adverse impacts of
293 the proposed activity described in the coastal site plan on both coastal
294 resources and future water-dependent development opportunities a
295 municipal board or commission shall: (1) Consider the characteristics
296 of the site, including the location and condition of any of the coastal
297 resources defined in section 22a-93, as amended by this act, and the
298 vulnerability of the site, based on the site's topography, to a rise in sea
299 level; (2) consider the potential effects, both beneficial and adverse, of
300 the proposed activity on coastal resources and future water-dependent
301 development opportunities; and (3) follow all applicable goals and
302 policies stated in section 22a-92, as amended by this act, and identify
303 conflicts between the proposed activity and any goal or policy.

304 (c) Any persons submitting a coastal site plan as defined in
305 subsection (b) of section 22a-105, as amended by this act, shall
306 demonstrate that the adverse impacts of the proposed activity are
307 acceptable and shall demonstrate that such activity is consistent with
308 the goals and policies in section 22a-92, as amended by this act.

309 (d) A municipal board or commission approving, modifying,
310 conditioning or denying a coastal site plan on the basis of the criteria
311 listed in subsection (b) of this section shall state in writing the findings
312 and reasons for its action.

313 (e) In approving any activity proposed in a coastal site plan, the
314 municipal board or commission shall make a written finding that the
315 proposed activity with any conditions or modifications imposed by the
316 board: (1) Is consistent with all applicable goals and policies in section
317 22a-92, as amended by this act; (2) incorporates as conditions or
318 modifications all reasonable measures which would mitigate the

319 adverse impacts of the proposed activity on both coastal resources and
320 future water-dependent development activities.

321 Sec. 4. Section 22a-105 of the general statutes is repealed and the
322 following is substituted in lieu thereof (*Effective October 1, 2012*):

323 (a) Coastal municipalities shall undertake coastal site plan reviews
324 in accordance with the requirements of this chapter.

325 (b) The following site plans, plans and applications for activities or
326 projects to be located fully or partially within the coastal boundary and
327 landward of the mean high water mark shall be defined as "coastal site
328 plans" and shall be subject to the requirements of this chapter: (1) Site
329 plans submitted to a zoning commission in accordance with section
330 22a-109; (2) plans submitted to a planning commission for subdivision
331 or resubdivision in accordance with section 8-25 or with any special
332 act; (3) applications for a special exception or special permit submitted
333 to a planning commission, zoning commission or zoning board of
334 appeals in accordance with section 8-2 or with any special act; (4)
335 applications for a variance submitted to a zoning board of appeals in
336 accordance with subdivision (3) of section 8-6 or with any special act,
337 and (5) a referral of a proposed municipal project to a planning
338 commission in accordance with section 8-24 or with any special act.

339 (c) In addition to the requirements specified by municipal
340 regulation, a coastal site plan shall include a plan showing the location
341 and spatial relationship of coastal resources on and contiguous to the
342 site; a description of the entire project with appropriate plans,
343 indicating project location, design, timing, and methods of
344 construction; an assessment of the capability of the resources to
345 accommodate the proposed use; an assessment of the suitability of the
346 project for the proposed site; an evaluation of the potential beneficial
347 and adverse impacts of the project; an assessment, based on the
348 topography of the site, of the impact that a rise in sea level will have on
349 the proposed use or structure over the use or structure's projected life
350 span; and a description of proposed methods to mitigate adverse

351 effects on coastal resources.

352 (d) Municipalities, acting through the agencies responsible for the
353 review of the coastal site plans defined in subsection (b) of this section,
354 may require a filing fee to defray the reasonable cost of reviewing and
355 acting upon an application.

356 (e) The board or commission reviewing the coastal site plan shall, in
357 addition to the discretion granted in any other sections of the general
358 statutes or in any special act, approve, modify, condition or deny the
359 activity proposed in a coastal site plan on the basis of the criteria listed
360 in section 22a-106, as amended by this act, to ensure that the potential
361 adverse impacts of the proposed activity on both coastal resources and
362 future water-dependent development activities are acceptable. The
363 provisions of this chapter shall not be construed to prevent the
364 reconstruction of a building after a casualty loss, except if: (1) Such
365 building is substantially damaged after the effective date of this section
366 by coastal flooding or inundation, (2) the cost of restoring such
367 building, after such damage, to its preexisting condition exceeds fifty
368 per cent of the fair market value of the building before the damage
369 occurred, and (3) such building is subsequently substantially damaged
370 by coastal flooding or inundation, the board or commission may
371 consider such substantial damage and subsequent substantial damage
372 as a factor in approving, modifying, conditioning or denying an
373 application to reconstruct such building, provided any such denial
374 shall constitute a taking for which the owner shall be compensated.

375 (f) Notwithstanding the provisions of any other section of the
376 general statutes to the contrary, the review of any coastal site plan
377 pursuant to this chapter shall not be deemed complete and valid
378 unless the board or commission having jurisdiction over such plan has
379 rendered a final decision thereon. If such board or commission fails to
380 render a decision within the time period provided by the general
381 statutes or any special act for such a decision, the coastal site plan shall
382 be deemed rejected.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2012</i>	22a-92
Sec. 2	<i>October 1, 2012</i>	22a-93
Sec. 3	<i>October 1, 2012</i>	22a-106
Sec. 4	<i>October 1, 2012</i>	22a-105

Statement of Legislative Commissioners:

Section 4(e)(2) was rephrased for clarity.

ENV *Joint Favorable Subst.*